

# Corporate Commercial Client Alert

## Employment and Pensions

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### The period of childbirth-related leave has been extended in Beijing, Shanghai and various cities in Mainland China: Employers in Mainland China should update the relevant policies and be alerted to compliance management

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For the purpose of adding or revising the rules pertaining to childbirth-related leaves, the local regulations have been amended in various provinces and municipalities in China including Beijing, Shanghai, Tianjin, Zhejiang, and Chongqing recently. Eligible employees will be entitled to extended period of maternity leave and parental leave. The carer's leave has also been carried out in a few cities for employees who are the only child in their family. The changes will lead to impact on the labour costs for employers in Mainland China. Relevant policies of employers, such as employees' handbook, would have to be updated in a timely manner, and attention should also be drawn to the leave management.

#### Law Amendments at the National Level

1. On 31 May 2021, the Central Political Bureau of the Communist Party of China (CPC) held a meeting, passed the *Decision on Optimizing the Birth Policy to Promote the Long-term Balanced Development of the Population* (《关于优化生育政策促进人口长期均衡发展的决定》) and further clarified that **a married couple can have up to three children (the "Three-Child Policy") and more supporting measures will be put in place in this regard.**
2. On 20 August 2021, the Standing Committee of the National People's Congress passed the *Decision on Amending the Population and Family Planning Law of the People's Republic of China* (《关于修改<中华人民共和国人口与计划生育法>的决定》) and added/amended various legal provisions closely related to the welfare of employees in this regard, for example:
  - The enactment of local regulations to provide for **parental leave** will be encouraged where appropriate considering the local circumstances (Section 2 of Article 25 of the *Population and Family Planning Law*); and
  - Individuals who have been entitled to receive subsidies for family planning in accordance with the laws and regulations during the implementation of one-child policy, shall continue to be entitled to such subsidies with further **preferential treatments in terms of elderly welfare and care services** (Section 4 of Article 31 of the *Population and Family Planning Law*).

#### Amendments of Local Regulations at Provincial and Municipal Level

Various provinces and municipalities have responded actively since the promulgation of the "Three-child Policy" together with supporting measures, as well as the revision of the relevant laws at the national level. Existing local laws and regulations have been revised in 18 provinces and municipalities including Beijing Municipality, Guangdong

Province, Zhejiang Province and Chongqing Municipality for the purpose of implementing the supporting measures for the "Three-child Policy". For example:

## Beijing

*Decision of the Standing Committee of the Beijing Municipal People's Congress on Amending the 'Regulations of Beijing Municipality on Population and Family Planning'* (《北京市人民代表大会常务委员会关于修改〈北京市人口与计划生育条例〉的决定》) was adopted by vote on 26 November 2021. In addition to the cancellation of restriction on birth, the main amendments are as follows:

1. Female employees' entitlement to extend maternity leave will be increased from 30 days **to 60 days**;
2. For married couples who give birth to children in accordance with the relevant laws and regulations, each parent will be entitled to **5 working days of parental leave per year before the child reaches the age of 3**, subject to a cap of 10 days in total for both;
3. The **holiday arrangement** for maternity leave and parental leave was clarified; and
4. An employee who is the only child of the family and whose parent(s) need care will be entitled to carer's leave of a maximum of 10 days per calendar year.

## Shanghai

*Decision on Amending The 'Regulations of Shanghai Municipality on Population and Family Planning'* (《关于修改〈上海市人口与计划生育条例〉的决定》) was adopted by vote on 25 November 2021. In addition to the cancellation of restriction on birth, the main amendments are as follows:

1. Female employees' entitlement to extend maternity leave will be increased from 30 days **to 60 days**;
2. For married couples who give birth to children in accordance with the relevant laws and regulations, each parent will be entitled to **5 working days of parental leave per year before the child reaches the age of 3**.

## Guangdong

*Decision of the Standing Committee of the Guangdong Province People's Congress on Amending the 'Regulations of Guangdong Municipality on Population and Family Planning'* (《广东省人民代表大会常务委员会关于修改〈广东省人口与计划生育条例〉的决定》) was adopted by vote on 1 December 2021. In addition to the cancellation of restriction on birth, the main amendments are as follows:

1. For married couples who give birth to children in accordance with the relevant laws and regulations, each parent shall be entitled to **10 working days of parental leave per year before the child reaches the age of 3**;
2. For a married couple whose household registration are in Guangdong Province and volunteer to have only one child in their lifetime during the implementation of the one-child policy, their children shall be entitled to 5 days of carer's leave per calendar year granted by his/her employer when the said couple reach the age of 60. Where the said couple are hospitalized for illness, their children shall be entitled to carer's leave of not more than 15 days per year in total.

## Compliance Measures to be Carried Out by Employers

Employers in Beijing and Shanghai should carry out the following compliance measures in a timely manner to ensure that **the benefits provided to employees are in compliance with the new statutory requirements and avoid potential employment disputes**:

### 1. Update internal rules and regulations related to employee benefits

Employers should review and update relevant rules and regulations in a timely manner, add and specify the types

of leave and refine the procedures for paternity leave, parental leave and carer's leave. After revising the employee handbook, employers should also carry out "democratic consultation procedures" and "public announcement procedures" in accordance with the Article 4 of the *Labor Contract Law* to meet statutory procedural requirements.

## 2. Clarify the compliance issues and practices of leave management

After the amendment of local regulations at provincial and municipal Level, certain issues remain to be clarified in practice, which are expected to be addressed by employers in their internal rules and regulations (e.g., employees' handbook). For example:

- Can the extended maternity leave be taken separately? In the event that the extended maternity leave overlaps with statutory holidays, should the employee be granted with days in lieu of such statutory holidays?
- Will a female employee, who has already taken the maternity leave, also be entitled to the extended maternity leave?
- How to determine the eligibility for maternity leave? For example, does it include the situation of re-marriage? Does it include foreign nationals, employees from Hong Kong, Macao and Taiwan, and/or their spouses of Chinese national?
- How to calculate an employee's salary during parental leave?
- Can unused parental leave be forfeited? Or should additional compensation be provided?
- Can newly recruited employees be entitled to parental leave during the probationary period?
- Should the unused parental leave be paid at the time of an employee's resignation?
- In relation to carer's leave, how to determine whether the parents of particular employee would need care?

Deacons suggests that employers in Mainland China should keep a copy of the "Guidelines for Human Resources Compliance Management" in relation to the leave requirements under the new legislation, so as to grasp a clearer understanding of the new issues, answer employees' questions accurately and promptly, and ensure that the operations and management are in compliance with the new legislation.

Our employment law team has rich experience in providing comprehensive and detailed service in relation to employment compliance for MNCs based in Mainland China. We are happy to provide our legal services to assist you in adapting to these regulatory changes under PRC laws.

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